

Alien and sedition acts: necessary reform for better border control or political ...

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The debate over the Alien and Sedition Acts of 1798 revealed bitter controversies on a number of issues that had been developing since the penning of the Constitution. The writers of the document knew that over time the needs of the nation and its people would change, and therefore provided for its amendment. But by not expressly delegating powers to specific organizations, whether the federal government, state governments, or the people themselves, they inadvertently created a major problem in the years to follow: Constitutional interpretation. Shortly after the Constitution's ratification, two distinct camps formed, each believing in opposite manners of interpretation. One group, the Federalists, led by the newly appointed Secretary of the Treasury, Alexander Hamilton, thought that the Constitution should be interpreted very loosely. He claimed that the Constitution contained powers other than those delegated or enumerated. These unspecified powers were implied powers. To explain these powers, Hamilton said it would be natural – or implied – that the federal government would gain control over any territory gained through conquest or purchase, although the Constitution made no mention of territorial control.

In essence, Hamilton wished to use the implied powers to build a strong and authoritative central government. In 1789, the Minister to France Thomas Jefferson, to Francis Hopkinson of Pennsylvania, protesting that “ I am not of the party of the federalists. But I am much farther from that of the anitfederalists.” However, the situation was so sensitive that he could not help but chose a side. In 1795, Jefferson wrote to a congressman from Virginia, William Giles, that he “ held “ t honorable to take a firm and decided part.” The group he sided with, the Democratic-Republicans, favored a strict

interpretation. As their leader, Jefferson argued that all powers not enumerated by the Constitution belonged to the States. The basis for his argument was the old English “compact” theory. This theory stated that various individuals, in this case the states, joined together in a formal agreement of government. Since the states had drawn up the contract and given power to the federal government, it should be up to them to decide who received the power, not the body they created. This debate over interpretation thus sparked one of the first and major issues that eventually led to the Alien and Sedition Acts: should a strong central government be formed (federalist desire), or should the individual states have control. And wild attacks of the ensuing debate also ignited the second issue, public defamation, which led to the Sedition Act.

In a letter to his Vice-President, John Adams, President Washington spoke of the problem that immigration produced. He wrote that incoming immigrants would have an unwelcome effect on the nation, as they would “retain the language, habits and principles (good or bad) which they bring with them.” This same problem was noted nine years earlier by Thomas Jefferson. It was his belief that “nothing can be more opposed than the maxims of absolute monarchies.” Immigrants leaving nations where such governments existed, would, as Washington would later state, bring to the United States those very ideals. And regardless of whether or not they publicly professed their beliefs of monarchical systems, Jefferson noted that they would surly “transmit these principles to their children.” Being Americans, theses same people would also have a share in government, and would “infuse into that spirit, warp and bias its directions, and render it a heterogeneous,

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incoherent, distracted mass.” Yet perhaps the person who best displayed the American attitude toward immigrants was John Adams. In 1797, during a speech to a special session of Congress, Adams implied that people from foreign countries were enemies of the nation as their leaders had taught them impressed upon them undemocratic principles. Said Adams, “ The speech of the President [of the French Directory]...evinces a disposition to separate the people of the United States from the government...whom they themselves have chosen to manage their common concerns.” Such distrust of immigrants led to the passing of the Alien act in the summer of 1798.

The Alien act required a fourteen year residency period for aliens prior to naturalization as a citizen allowed the restraint and removal in time of war of resident adult aliens of the hostile nations, and gave the President the power to deport “ all such aliens as he shall judge dangerous to the peace and safety of the United States.” Most Americans had little problem with the first part of the Act, but the latter parts were controversial. The Republicans viewed this bill as nothing short of an attempt to strengthen the federal government and subvert the power of the States. Edward Livingston, a Republican congressman from New York, in a speech to the House of Representatives on June 21, 1798, remarked: “...by this act the president alone is empowered to make the law, to fix in his mind what acts, words, what thoughts or looks, shall constitute such a crime.”

The Congressional allowance of such a delegation and the Supreme Court’s collaboration (via not condemning the Act) “ comes completely within the definition of despotism – a union of legislative, executive, and judicial

powers.” Another Republican, James Madison, also noticed the beginnings of monarchy. In a letter to Jefferson on May 20, 1798, Madison wrote, “ The abolition of Royalty was it seems not one of his [Adams’] Revolutionary principles.” Jefferson also noticed the rising aristocratic tide in a letter to Philip Mazzei of Italy in 1796, “...an Angli! can monarchial, and aristocratical party has sprung up, whose avowed objective is to draw over us the substance...of the British government.” The Federalist, ware of the growing opposition, defended their principle. They claimed to be trying to put the country on solid footing: Hamilton with his financial plan and others following their own building designs. In a letter to Colonel Edward Carrington of Virginia in 1792, Hamilton commented, “ Mr. Jefferson and Mr. Madison have been found among those who are disposed to narrow the federal authority... [They] in my judgement, are subversive to the principles of good government and dangerous to the Union, peace, and happiness of the country.” The debate over federal authority and states’ rights continued on and the parties continued to bitterly attack one another.

In late 1798 and early 1799, a young Englishmen visiting the United States, D. M. Erkshire, noticed the ferocity of the attacks. “...they think nothing of wishing each other destroyed each Party openly descanting upon the probability of its becoming a matter of necessity to extirpate the opponent one...Politics has so divided men and so far do they carry it that it seldom happens that a person of one way of thinking visits any body in the opposite.” Erkshire’s statement was by no means incorrect. Jefferson and Adams, once good friends, were so decidedly against the other that they did not communicate with each other for over ten years. Such rifts in society

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were not just the result of differing opinions on government, though. The defaming attacks by both sides on each other were extremely harsh. In his letter to Colonel Carrington of Virginia in 1792, Hamilton described the republican attachment to France “womanish” and their resentment of England as “womanish” as well. Later that year, Jefferson struck back at Hamilton in a letter to President Washington.

Said Jefferson, “His system flowed from principles adverse to liberty, and was calculated to undermine and demolish the Republic.” Hamilton also attacked Jefferson and his republicans through Washington. Hamilton, in writing Washington’s farewell address, wrote, “They serve to organize faction and to put in the stead of the delegated will of the whole nation, the will of a party, often a small minority of the whole community.” Hamilton continued to attack Jefferson’s favor of France, wrote in 1797 that “The man who...shall be the apologist of France, and who attacks his own government, is not an American. The choice for him lies in being deemed a fool, a madman, or a traitor.” The attacks kept going back and forth between the two groups, and they continually became more viscous as the years went by. The country was beginning to split and that worried many people. In a 1798 letter to the secretary of the treasury, Oliver Wolcott, Hamilton observed that civil war was not improbable.

The federalists thus pushed forward an act that would hopefully resolve the problem, namely, the Sedition Act. The Sedition Act prohibited combination or conspiracy against the United States government and the publication of “scandalous and malicious” writings against the government or its officials,

under penalty of fine or imprisonment. John Allen, a Federalist congressman from Connecticut, supported the act in a 1798 speech to the House of Representatives. Said Allen, “ The freedom of the press and opinions was never understood to give the right of publishing falsehoods and slanders, nor of exciting sedition, insurrection, and slaughter, with impunity. A man was always answerable for the malicious publication of falsehood...” Some were not as dedicated to the Sedition Act as Allen, but they still supported it. In his letter to Wolcott, Hamilton confided, “ I hope the thing may not be hurried through. Let us not establish a tyranny. Energy is a very different thing from violence. If we make no false step, we shall be essentially united, but if we push things to an extreme, we sh! all then give to faction [the republicans] body and solidarity.” Hamilton’s hope was not realized though, as the republicans were given body.

Albert Gallatin, a republican congressman from Pennsylvania, in a speech before the House of Representatives in 1798, concluded, “...this bill must be considered only as a weapon used by a party now in power in order to perpetuate their authority and preserve their present places.” Gallatin, for the most part, appears to be correct. The Sedition Act was a direct violation of the first amendment, but a federalist Congress, a federalist president (Adams), and a federalist appointed panel of justices approved it. Knowing that they could do nothing to change the Sedition Act in the federal government, the republicans turned to the states. They argued that the federal government had stepped beyond its powers, powers delegated to it by the states via the Constitution (Jefferson’s “ compact” theory). Thus the states had the right to repeal the act, or at the very least, ignore it. Only two

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states followed the republicans, Virginia and Kentucky. Although the Sedition Act went out of effect in 1801, it kept alive the old debate of states' rights and central authority.